UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAYNE F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 3:23-cv-5716-TLF

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for Disability Insurance Benefits (DIB). The parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 2. Plaintiff challenges the Commissioner's decision finding her not disabled. Dkt. 4, Complaint.

A. Procedural History

Plaintiff filed her application for DIB on November 30, 2020, alleging an onset date of November 22, 2020. AR 17, 286–87. For the purposes of her DIB eligibility, her date last insured is December 31, 2024. AR 17. After her application was denied initially and upon reconsideration (AR 127, 173), hearings were held before the ALJ on January 31, 2023 (AR 75–105), and April 7, 2023 (AR 106–26).

The ALJ issued a decision on May 25, 2023, finding plaintiff not disabled. AR 14–35. The ALJ found plaintiff had the following severe impairments: post-traumatic stress

disorder (PTSD); depressive disorder; anxiety disorder; arthritis; obesity; lupus; cubital tunnel syndrome; carpal tunnel syndrome; stenosis; radiculopathy; headaches; degenerative disc disease; degenerative joint disease; and fibromyalgia. AR 19. The ALJ found plaintiff had the Residual Functional Capacity (RFC)

> to perform sedentary work, as defined in 20 CFR 404.1567(a), that does not require climbing of ladders, ropes, or scaffolds; that does not require more than occasional balancing, stooping, kneeling, crouching, crawling, or climbing of ramps or stairs; that does not require more than frequent handling or fingering; that does not require concentrated exposure to hazards or pulmonary irritants; that allows a break after 2 hours of work; and that involves predictable work settings and processes.

AR 22. Based on hypotheticals the ALJ posed to the Vocational Expert (VE) at the hearing, the ALJ concluded that plaintiff could not perform her past work but could work as an appointment clerk, reception clerk, or telephone solicitor. AR 28.

B. Analysis

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of Social Security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record. *Revels v. Berryhill,* 874 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill,* 139 S. Ct. 1148, 1154 (2019) (internal citations omitted). The Court must consider the administrative record as a whole. *Garrison v. Colvin,* 759 F.3d 995, 1009 (9th Cir. 2014).

Where the evidence would reasonably support affirming or reversing the decision of the ALJ, the Court may not substitute its judgment for Commissioner's. *Burch v. Barnhart,* 400 F.3d 676, 679 (9th Cir. 2005). The Court must weigh both the evidence

that supports and evidence that does not support the ALJ's conclusion. *Id.* The Court may not affirm the decision of the ALJ for a reason upon which the ALJ did not rely. *Id.* Rather, only the reasons identified by the ALJ are considered in the scope of the Court's review.

1. Medical Opinions

Plaintiff argues the ALJ failed to adequately consider the medical opinions of PA Lynette McLagan and Terilee Wingate, Ph.D. Dkt. 9 at 3–5.

Under the regulations applicable to claims, like plaintiff's, filed on or after March 27, 2017, an ALJ need not "defer or give any specific evidentiary weight . . . to any medical opinion(s) . . . including those from [the claimant's] medical sources." 20 C.F.R. § 404.1520c(a). Rather, the ALJ must explain how he or she considered the factors of supportability and consistency in evaluating the medical opinions. *Id.* § 404.1520c(a)–(b). "[A]n ALJ cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence." *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

A. PA McLagan

Consulting psychological examiner PA McLagan submitted an evaluation of plaintiff in April 2021. AR 467–75. She opined plaintiff had fair limitations—defined as "more than a slight limitation" but one in which a claimant is "still able to function satisfactorily" in the given area—in several of her abilities, including in her ability to interact with coworkers, supervisors, and the public, and adapt to the usual stresses of a workplace environment. AR 474. She also wrote that plaintiff's overall prognosis was

"poor," and that "she would most likely struggle with the usual stressors of a typical workplace environment." AR 474.

The ALJ found PA McLagan's opinion persuasive. AR 26. He noted that "any difficulties that the claimant may have with concentration, persistence, pace, and adaptation are addressed with limitations in timing of breaks, as well as predictability of settings and processes." *Id.*

Plaintiff argues the ALJ failed to adequately address PA McLagan's statement that plaintiff's prognosis was "poor" and that she would "struggle with the usual stressors of a typical workplace environment." Dkt. 9 at 4.

The Court disagrees. PA McLagan's statement that plaintiff's prognosis was "poor" was not an opined limitation the ALJ was required to discuss. *See* 20 C.F.R. § 1513(a)(3) (a "prognosis" is "other medical evidence" and not part of a "medical opinion"). PA McLagan's statement that plaintiff would struggle with the usual stressors of a work environment did not specify a precise limitation, and PA McLagan indicated elsewhere plaintiff's ability to "adapt to the usual stresses of a workplace environment" was "fair" and thus that plaintiff was "able to function satisfactorily" in that area. AR 474. *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) (certain parts of opinion were "not useful because they failed to specify [the plaintiff's] functional limits" and thus "the ALJ could reasonably conclude these characterizations were inadequate for determining RFC"). Because the RFC "is the most [a claimant] can still do despite [her] limitations," 20 C.F.R. § 1545(a)(1), PA McLagan's opinion that plaintiff was able to "satisfactorily" adapt to the stresses of the workplace environment did not require any additional limitations in the RFC.

B. Dr. Wingate

Consulting psychologist Dr. Wingate completed an evaluation of plaintiff in October 2022. AR 1713–17. She opined plaintiff had several moderate and marked limitations, but that these limitations would last only six to eight months. *See* AR 1715–16. The ALJ found Dr. Wingate's opinion "somewhat persuasive" and noted that Dr. Wingate opined plaintiff's limitations would last only six to eight months, but that the RFC "is assessed on a 12-month basis." *See* AR 26–27.

Plaintiff argues the ALJ erred because plaintiff "had already been that limited for more than 12 months," as shown, according to plaintiff, by PA McLagan's opinion. *See* Dkt. 9 at 5 (citing AR 474).

Dr. Wingate's opinion did not, itself, indicate plaintiff's limitations had already lasted more than 12 months. *See* AR 1715–16. The ALJ therefore rationally interpreted Dr. Wingate's opinion as only opining short-term limitations. Such limitations are not included in the RFC. *See* SSR 23-1p ("Because of the duration requirement, we will not include limitations in the RFC assessment that completely resolve, or that we expect to completely resolve, within 12 months."); *see also Barnhart v. Walton*, 535 U.S. 212, 217–22 (2002) (upholding regulations interpreting duration requirement as requiring that actual inability to engage in substantial gainful activity last or be expected to last more than 12 months). Moreover, as discussed above, PA McLagan's opinion does not support the claim that plaintiff possessed the same marked limitations as Dr. Wingate opined for more than twelve months.

The ALJ did not err in his consideration of Dr. Wingate's opinion.

2. Subjective Symptom Testimony

Plaintiff argues the ALJ erred in assessing her subjective symptom testimony. Dkt. 9 at 5–10.

Plaintiff testified at her hearing that, due to pain caused by her impairments, she had difficulties walking, sitting, bending, reaching overhead, stooping, and bending. *See* AR 88–89. She testified that standing for prolonged periods would cause pain, that she oftentimes had headaches and migraines, and that both the pain and her headaches were distracting. AR 91–94. She also testified that, prior to her right arm surgery in January 2023, she had difficulties typing, her fingers tended to get numb from a pinched nerve, and she had difficulties gripping. AR 95–96. Finally, she testified that her depressive disorder caused her to be unable to leave bed approximately once a week. AR 102.

The ALJ's determinations regarding a claimant's statements about limitations "must be supported by specific, cogent reasons." *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). The ALJ found that plaintiff presented evidence of an underlying impairment which could be expected to produce the alleged symptoms. AR 23. In such a circumstance, "the ALJ can reject [plaintiff's] testimony about the severity of her symptoms only by offering specific, clear, and convincing reasons," unless there is evidence of malingering. *Garrison*, 759 F.3d at 1014–15 (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)).

In so doing, "[t]he ALJ must state specifically which symptom testimony is not credible and which facts in the record lead to that conclusion." *Smolen*, 80 F.3d at 1284. "General findings are insufficient; rather, the ALJ must identify what testimony is not

credible and what evidence undermines the claimant's complaints." *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Reddick*, 157 F.3d at 722). The Court "may not take a general finding" like "an unspecific conflict" and "comb the record to find specific conflicts." *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

Here, the ALJ made a general finding: he said that "the weight that can be given to the claimant's symptom reports is undermined for the reasons discussed throughout this decision. Inconsistencies undermine the weight that can be given the claimant's symptom reports." AR 23. The ALJ, however, proceeded to summarize the medical evidence of the record without referring to plaintiff's subjective testimony or identifying inconsistencies between that testimony and the medical evidence. *See* AR 23–26. He therefore failed to make specific findings with respect to plaintiff's testimony. In a similar circumstance, where an ALJ "simply stated her non-credibility conclusion and then summarized the medical evidence supporting her RFC determination," the Ninth Circuit has found that "[t]his is not the sort of explanation of the kind of 'specific reasons' we must have in order to review the ALJ's decision meaningfully, so that we may ensure that the claimant's testimony was not arbitrarily discredited." *Brown-Hunter*, 804 F.3d at 494.

According to defendant, the ALJ validly discounted plaintiff's testimony because it was inconsistent with medical evidence and her daily activities. *See* Dkt. 11 at 3–5. Although the ALJ summarized the medical evidence and plaintiff's daily activities, the ALJ did not describe this evidence as being inconsistent with plaintiff's testimony. *See* AR 23–26. The Court cannot manufacture inconsistencies not relied on by the ALJ to uphold the ALJ's determination. *Brown-Hunter*, 804 F.3d at 494 ("Although the

inconsistencies identified by the district court could be reasonable inferences drawn from the ALJ's summary of the evidence, the credibility determination is exclusively the ALJ's to make, and ours only to review. As we have long held, 'We are constrained to *review* the reasons the *ALJ* asserts.'") (quoting *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)) (emphasis in original).

Moreover, the inconsistencies identified by defendant to not reach the entirety of plaintiff's testimony. For instance, neither the ALJ nor defendant cite to any medical evidence which purports to be inconsistent with plaintiff's testimony that she experiences headaches which make it difficult to concentrate. *See* AR 22–27; Dkt. 11 at 3–5. Additionally, with respect to plaintiff's testimony about her difficulties with using her fingers and typing, the ALJ discussed some of the evidence related to plaintiff's cubital and carpal tunnel syndromes, noting that a single exam had "normal range of motion in" some of her joints and that, after plaintiff underwent surgery, a test indicated her left hand had normal grip and strength, straight leg raise tests were negative, and plaintiff exhibited normal gait. AR 24 (citing AR 1711, 2008, 2011). This is not necessarily inconsistent with plaintiff's testimony that she had difficulties writing and typing—none of that evidence directly relates to her ability to use her fingers for manipulative functions.

With respect to plaintiff's activities of daily living, the ALJ noted plaintiff was able "to drive, shop in stores, make meals, clean, and engage in home improvement projects." AR 24 (citing AR 322–29, 383–86, 397–400). An ALJ may discount a claimant's testimony based on daily activities that contradict their testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). But here, there is no "reasonable inference that such an inconsistency exists." *Ferguson*, 95 F.4th at 1203. No evidence suggested

plaintiff's activities involved prolonged sitting or walking. Nor did evidence suggest her activities involved using her fingers frequently. Nor did the ALJ suggest plaintiff engaged in these activities at times in which she had headaches.

In sum, the ALJ failed to give specific, clear, and convincing reasons for rejecting plaintiff's testimony. An error that is inconsequential to the non-disability determination is harmless. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)). If the errors of the ALJ result in a residual functional capacity (RFC) that does not include relevant work-related limitations, the RFC is deficient and the error is not harmless. *Id.* Here, plaintiff's subjective testimony evidence suggested she was limited in several ways not reflected in the RFC: she testified she had significant manipulative difficulties, that she had difficulties sitting for prolonged periods, and that she had distractions and pain resulting from headaches. Thus, the ALJ's error in failing to give specific, clear, and convincing reasons was not harmless.

3. Lay Witness Statement

Plaintiff argues the ALJ erred by failing to address the statement of plaintiff's friend Chad. Dkt. 9 at 11. Chad completed a function report and a headache questionnaire in December 2020. AR 314–21, 381–82. He lived with plaintiff at the time the reports were completed and indicated he had known plaintiff for six years. AR 314. He indicated plaintiff had difficulties with functions such as lifting, bending, standing, and walking (AR 319) and that plaintiff had difficulties completing her daily functions (AR 314). He also indicated plaintiff had "2-3 headaches a week" and "1-2 major headaches per month," and that her headaches typically last one or two days and cause plaintiff to be unable to do her daily activities. AR 381.

The ALJ did not address Chad's statement. *See* AR 22–27. Prior to the implementation of the new regulations governing the evaluation of medical opinions, the Ninth Circuit's rule was that, "[i]f the ALJ wishes to discount the testimony of the lay witnesses, he must give reasons that are germane to each witness." *Dodrill v. Shalala*, 12 F.3d 915, 920 (9th Cir. 1993).

Defendant points out that, under the new regulations for evaluating medical evidence, "the ALJ is 'not required to articulate how [they] consider evidence from nonmedical sources' using the same criteria as required for medical sources." Dkt. 11 at 7 (citing 20 C.F.R. § 404.1520c(d)) (alteration in original). Yet, "an ALJ . . . must explain why significant probative evidence has been rejected.'" *Kilpatrick v. Kijakazi*, 35 F.4th 1187, 1193 (9th Cir. 2022) (quoting *Vincent ex rel. Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984)). This standard enables courts "to engage in meaningful review of a disability claim." *Id.*

Under this standard, Chad's statement was significant and probative evidence which the ALJ could not ignore – it suggested plaintiff had numerous functional limitations based on his everyday observations of plaintiff as plaintiff's roommate. *Cf. Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996); *Dodrill*, 12 F.3d at 919–20 ("[F]riends and family members in a position to observe a claimant's symptoms and daily activities are competent to testify as to her condition. . . . An eyewitness can often tell whether someone is suffering or merely malingering. . . . [T]his is particularly true of witnesses who view the claimant on a daily basis . . . .").

Defendant also argues that any error in failing to address the plaintiff's friend's statement is harmless because "the same evidence that the ALJ referred to in

discrediting [the claimant's] claims also discredits [Chad's] claims." Dkt. 7 at 11 (quoting *Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012)) (alterations in original). However, the Court has found that the ALJ did not adequately consider plaintiff's claims, and, therefore, it cannot find that the reasons given for discrediting plaintiff's claims are also valid reasons for discrediting Chad's statement.

Thus, the ALJ erred by failing to give reasons for not accounting for Chad's statement.

4. Transferable Skills

Plaintiff challenges the ALJ's finding at step five that she had transferrable work skills which would enable her to perform the positions identified by the ALJ. Dkt. 9 at 13–14.

In determining whether a claimant can perform work which exists in significant number in the national economy, an ALJ must consider whether the claimant has skills from past work which can be transferred to meet the requirements of skilled or semi-skilled work activities of other jobs. *See* 20 C.F.R. §§ 404.1520(g)(1), 404.1560(c), 404.1568(d)(1). If an ALJ determines a claimant has acquired transferable work skills from past employment, the ALJ must identify the skills, and positions to which they may be transferred. *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1223–36 (9th Cir. 2009).

The VE's testimony is ordinarily substantial evidence on which an ALJ may rely in finding a claimant had transferable skills. *See Osenbrock v. Apfel*, 240 F.3d 1157, 1163 (9th Cir. 2001) (finding that testimony of VE that duties of past work provided skills which were transferable and similar to other work was substantial evidence on which to

uphold ALJ's transferability determination); *see also Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) ("A VE's recognized expertise provides the necessary foundation for his or her testimony.").

Here, based on the VE's testimony (AR 115), the ALJ found Plaintiff had the following transferrable skills from her past work as an administrative clerk: "information giving, providing info[rmation] to people, answering, informing, customer service, taking orders." AR 27. The ALJ then found, based on the VE's testimony, that these skills would transfer to the semi-skilled positions which the ALJ identified Plaintiff could perform at step five—appointment clerk, reception clerk, and telephone solicitor. AR 28.

Plaintiff raises several arguments with respect to the ALJ's transferability finding. *See* Dkt. 9 at 13–14. First, plaintiff argues that the skills identified by the ALJ and the VE are not "skills," but, rather, a mere "recitation of tasks." Dkt. 9 at 13–14. Plaintiff's argument rests on a flawed premise: that a "task" cannot also be a "skill." SSR 82-41(2)(a) defines a "skill" as

> knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn). It is practical and familiar knowledge of the principles and processes of an art, science or trade, combined with the ability to apply them in practice in a proper and approved manner.

The same ruling says that "[s]kills refer to experience and demonstrated proficiency with work activities in particular tasks or jobs" and, "[i]n evaluating the skill level of [past relevant work] or potential occupations, work activities are the determining factors." SSR 82-41(2)(d).

This definition of skills makes clear that the performance of "work activities"—which may also be tasks—are skills when those activities require "the exercise of

significant judgment" in the context of a skilled or semiskilled occupation, require the development of "practical and familiar knowledge" regarding the principles and processes the activity involves, and require the application of that knowledge "in a proper and approved manner." SSR 82-41(2)(a). The ruling's emphasis on "work activities" as "the determining factors" confirms this understanding. SSR 82-41(2)(d). Indeed, many of SSR 82-41's examples of skills can readily be described as tasks: "typing, filing, tabulating and posting data in record books, preparing invoices and statements, operating adding and calculating machines."

The VE testified the skills identified by the ALJ were, indeed, skills, and that those skills were likely acquired in plaintiff's past work. AR 115. The Court presumes that the VE was familiar with the Commissioner's regulations and definitions of terms of art such as "skills" when he gave his testimony. *See Terry v. Saul*, 998 F.3d 1010, 1012–14 (9th Cir. 2021). Absent contrary evidence, the ALJ reasonably relied on the VE's testimony that plaintiff had acquired transferable skills. *See Osenbrock*, 240 F.3d at 1163.

Second, plaintiff argues that "there is no evidence that it took [plaintiff] longer than 30 days to learn the information she gave out," Dkt. 9 at 14, suggesting that the identified skills do not meet the "30 days" requirement of SSR 82-41(2)(a). However, SSR 82-41(2)(a) specifies that the "occupation" in which skills are acquired, and not the specific skills themselves, must be "above the unskilled level," which means that the occupation "requires more than 30 days to learn." This is not a question of whether plaintiff herself required more than 30 days to learn the occupation, but, rather, whether

"a person *can usually* learn to do the job in 30 days." 20 C.F.R. § 404.1568(a) (defining "unskilled work") (emphasis added).

The ALJ found, based on the VE's testimony, that plaintiff's past relevant work was semiskilled, rather than unskilled, work. AR 27. The Court presumes the VE was familiar with Commissioner's definition of "unskilled work" when he testified that plaintiff's past work was done at the semiskilled, rather than the unskilled, level. *See Terry*, 998 F.3d at 1012–14. This testimony was substantial evidence on which the ALJ reasonably relied. *See Bayliss*, 427 F.3d at 1218.

Finally, plaintiff argues that the RFC's limitation to "predictable work settings and processes" is "inconsistent with the defendant's definition of a skill" because "'significant judgment' would not be needed in a job with 'predictable work settings and processes.'" Dkt. 9 at 14.

The ALJ must consider whether a reduced RFC prohibits the exercise of skills in determining whether those skills would be transferable to other work. *See* SSR 82-41(4)(a). But plaintiff does not explain, nor can the Court discern, why a position cannot require an occupant to exercise significant judgment within the context of predictable settings and processes. Indeed, it is not difficult to imagine positions where a worker would do just that. For instance, the position of appointment clerk requires, among other things, "schedul[ing] appointments with [an] employer or other employees for clients or customers." DOT 237.367-010. The position's occupant might engage in a predictable process to schedule appointments and do so in a predictable setting while nevertheless exercising significant judgment in determining when appointments are scheduled and how to interact with clients and customers. Thus, the VE's testimony that a person

limited to predictable settings and processes could perform the positions identified is substantial evidence on which the ALJ reasonably relied. *See Bayliss*, 427 F.3d at 1218.

In sum, the Court finds no error in the ALJ's determination that plaintiff possesses transferable work skills.

5. Remedy

Plaintiff asks the Court to remand the case with directions to award benefits. Dkt. 9 at 15–18. "'The decision whether to remand a case for additional evidence, or simply to award benefits . . . is within the discretion of the court.'" *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). The Court "generally remand[s] for an award of benefits only in 'rare circumstances.'" *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1100 (9th Cir. 2014) (quoting *Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004)).

A remand for award of benefits is proper only if

> (1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand.

Trevizo, 871 F.3d at 682–83 (quoting *Garrison*, 759 F.3d at 1020). Even if each element is satisfied, the Court retains discretion to remand for further proceedings. *See Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). The Court should "remand for further proceedings when . . . an evaluation of the record as a whole creates serious doubt that a claimant is, in fact, disabled." *Garrison*, 759 F.3d at 1021. "If additional proceedings

can remedy defects in the original administrative proceeding, a social security case should be remanded for further proceedings." *Trevizo*, 871 F.3d at 682 (cleaned up).

The Court has found that the second element of the credit-as-true test is satisfied—the ALJ failed to provide legally sufficient reasons for rejecting plaintiff's subjective testimony and Chad's statement. However, the Court finds that there are ambiguities in the record for which further proceedings would serve the useful purpose of allowing the ALJ to resolve, and that the improperly evaluated evidence would not necessarily direct a finding of disability. For instance, the record as ambiguous as to the frequency with which plaintiff experienced migraines which would impact her work performance. *Compare* AR 94 (plaintiff testifying she has a migraine only twice a year) *with* AR 381 (Chad indicating plaintiff had "1-2 major headaches per month").

Plaintiff argues that her testimony that she has difficulties using her fingers, if credited as true, would direct a finding of disability under SSR 96-9p. Dkt. 9 at 17. That ruling states that "[a]ny significant manipulative limitation of an individual's ability to handle and work with small objects with both hands will result in a significant erosion of the unskilled sedentary occupational base." SSR 96-9p. But having found that the ALJ reasonably relied on the VE's testimony that plaintiff was capable of semiskilled work, this statement does not direct a finding of disability in this case. And as plaintiff acknowledges, plaintiff underwent surgery related to her manipulative limitations during the relevant time – which the ALJ only briefly considered. *See* Dkt. 9 at 10 ("Whether or not [plaintiff] ever regained her normal handwriting is not answered in the current record . . . ."). She testified she experienced some improvements post-surgery. *See* AR 96. This raises further ambiguities related to both the period in which plaintiff may have

experienced disability, and the effectiveness of treatment, that must be resolved on remand. *Cf. Dominguez v. Colvin*, 808 F.3d 403, 409–10 (9th Cir. 2015) (as amended) ("When further proceedings are necessary to determine the onset date, it is appropriate to remand for those proceedings.").

CONCLUSION

Based on the foregoing discussion, the Court concludes the ALJ improperly determined plaintiff to be not disabled. Therefore, the ALJ's decision is reversed and remanded for further administrative proceedings including a de novo hearing.

Dated this 3rd day of May, 2024.

Theresa L. Fricke
United States Magistrate Judge